

Submission No.			250	
Organisation Name or Name of Submitter			Patricia Whyte	
Item No.	Section Ref.	Page No.	Observation Statement	TII Response
Re: Railway (Metro Link Estuary to Charlemont via Dublin Airport) Order 2022 Ms. Patricia Whyte 2 Harcourt Terrace Dublin 2 DO2E722 Ref: ML6EU16				
1	Introduction	1	With regards to the above matter I can confirm that I have been instructed to act on behalf of the above named party in relation to the above compulsory acquisition order as it effects their property. My client's property is part of a set piece regency terrace which was developed in the 1830's and is unique in that it is still largely intact and is therefore of significant architectural and historical significance. The property is also a protected structure under the current Dublin city Development plan.	Thank you for your submission. TII acknowledge the architectural and historical significance of the property and recognise that the property is also designated as a protected structure. Hence, the property has been included in the impact assessment and presented in the EIAR Chapter 26 (Architectural Heritage), Table 26.25: "BH-565 - 2 Harcourt Terrace - Three-storey, two-bay semi-detached house with rendered façade and with ionic pilasters at ground-floor level; single storey porch to side; RPS 3562 DCC; NIAH 50110464".
2	Draft of Proposed RO (paragraph 1)	1	My client was issued a letter dated the 20th of September 2022, which included several extracts from plans and a copy of the public advertisement placed in the Irish Independent on the 17th of September 2022, which proports to indicated they have applied for the relevant railway order. However, in their letter they refer to relevant extracts from the "draft of the proposed Railway Order". Indeed the booklet provided is called the Draft Railway order.	TII confirm that a letter (Ref. CAP_ML_1275_52) was issued on 20th of September 2022 to Ms. Patricia Whyte at 2 Harcourt Terrace with reference to 'Intended application by the National Roads Authority (operating as Transport Infrastructure Ireland) for the Railway (MetroLink-Estuary to Charlemont via Dublin Airport) Order [2022]'. Please note that the reference to a "draft Railway Order" is correct and that it reflects the fact that it is a description of what is proposed by TII for approval. The "draft" railway Order will become a "Railway Order" only if and when An Bord Pleanála approve it and update to include any specific additional requirements that the Board identify as being required.
3	Draft of Proposed RO (paragraph 2)	1&2	In my view there should be no draft involved at this juncture either TII wish to apply for a railway order or they don't. If they wish to apply for a Railway Order to the Bord then both the Bord and Land owner should know exactly what is in the order and there should be no equivocation, which appears to be the case here were the documents are only draft. It begs the question of when will the final Order be submitted and will it be any different from the Draft Order. It is difficult to see how a land owner can make submissions or how the Bord can make decisions based on a draft.	Please refer to response item (2) above in relation to the term 'Draft'.
4	COMPUSORY PURCHASE AND SUPPORTING INFORMATION	2	In respect of the draft Order I would point out that reference is consistently made to the schedules which are not attached. In particular in part three makes reference to several schedules which are meant to indicate the lands being acquired. Again without these schedules and plans it is not possible for us to properly identify the lands being acquired and the possible effects on our property. I would also draw the Bords attention to section 7.59 of the Non - Technical summary which states that there is are "limits of deviation during the construction phase. There is no such provision allowed in law. In fact schedule three of the 1966 Housing act states "the compulsory purchase order shall be in a prescribed form and shall describe by reference to a map the land to which it relates and shall incorporate, subject to the modifications here and after mentioned any necessary adaptations" Clearly the documentation provide to date does not meet this legal requirement.	Individual property letters were issued. Notification letter CAP_ML_1275_52 issued on 20th of September 2022 at 2 Harcourt Terrace includes relevant extracts from the Book of Reference to the plan, indicating the identity of the owners and of the occupiers of the lands described in the Plan. The unique land take referencing and numbering for 2 Harcourt Terrace is "ML6E-U18". The book of reference - third schedule (substratum land which may be acquired) under 2 Harcourt Terrace (ML6E-U18) is attached to the above mentioned notification letter. Relevant extracts of plans (including maps or drawings) which indicate the extent of the lands or land rights affected were also enclosed to the notification letter and include: <ul style="list-style-type: none"> • Individualised Property Details (Plan drawing no. ML1-JAI-BOR-ROUT_XX-DR-Y-03764, ML6E-U18), which is the drawing marking out your property (only), which is extracted from the below property plan. • Property Details Hatch Street Lower to Grande Parade (Plan drawing no. ML1-JAI-BOR-ROUT_XX-DR-Y-01097, ML-P 306 E-O), which shows the extent and types of land acquisition that TII proposes to acquire to facilitate the construction, operation, and maintenance of the MetroLink project along the section of the route close to your property. • Alignment Long Section 18 (Plan drawing no. ML-LN O-O18), which shows the indicative depth of the tunnel along the section of the route close to your property. • General Arrangement Hatch Street Lower to Grande Parade (Plan drawing no. ML-RO 306 E-O), which shows the general arrangement of the tunnel along the section of the route close to your property. The design includes for a limit of deviation which is required to allow for unforeseen obstructions and construction tolerances which may necessitate a change to the alignment. In the highly unlikely event that this were to occur, any resulting environmental impacts will comply with the limits set by the enforceable Railway Order. TII has carried out a comprehensive set of ground investigations in accordance with relevant guidelines and best practice. It has a high confidence that MetroLink can be constructed along the proposed alignment without requiring vertical or horizontal adjustment. However, in order to guard against rare and undetectable subterranean conditions that might interfere with construction, the Railway Order provides for limits of deviation (as have other railway authorisation since at least the 1840s). The impacts of potential changes within the Limits of Deviation are considered in the Wider Effects Report (Appendix A5.19).

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Item No.	Section Ref.	Page No.	Observation Statement	TII Response
-----------------	---------------------	-----------------	------------------------------	---------------------

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5	SUBSTRATUM DEFINITION (paragraph 1)	2&3	<p>The documentation supplied to date makes reference to acquiring substratum. There is no definition supplied as to what this is. Is it measured from the top or the bottom of the Tunnel? When they say the surface what do they mean, is it the floor of a basement and what consideration has been given to any structures with piled foundations or underground car parking? One can only presume that TII will attempt to rely on rule 17 as introduced by section 48 of the Planning and development (strategic infrastructure Act 2006 which states "the value of any land 10 meters or more below the surface of that land shall be taken to be nil, unless it is shown to be of a greater value by the claimant". All the other rules for the assessment of compensation are based on the open market Value of the lands, which can be determined by an Arbitrator in default of agreement. It is simply not credible that legislation can be introduced where the state has in essence predetermined a nil value to part of someone's property. Indeed even in the case of a half road bed which is controlled by a local authority this is not the case. We would ask that the Bord should seek legal clarity from the Courts as to whether this legislation is legal in the first instance.</p>	<p>Substratum' refers to an underlying layer or substance, in particular a layer of rock or soil beneath the surface of the ground.</p> <p>The substratum land take has been generated by creating a limit of deviation (LOD) ranging from 5 metres vertically upwards and 10 metres downwards to 15 metres laterally for the tunnel alignment. Substratum land take is shown on the Property Drawings submitted with the RO application (please refer to the 2 Harcourt Terrace property details plan mentioned at Item 4 above) and on Figure 21.1. of the EIAR Chapter 21 (Land Take). Rule 17 introduced by Section 48 of the Planning and Development (Strategic Infrastructure) Act 2006, states: 'The value of any land lying 10 metres or more below the surface of that land shall be taken to be nil, unless it is shown to be of a greater value by the claimant'.</p> <p>For MetroLink project, the depth of tunnel will vary along the route but it is expected that the average depth will be approximately 24m from ground level to track level. In the vast majority of cases the subsoil can be acquired without affecting the above ground property. For 2 Harcourt Terrace property the following data are shown on the individualised property details plan (please refer to Plan drawing no. ML1-JAI-BOR-ROUT_XX-DR-Y-03764, ML6E-U18. listed at Item 4 above):</p> <ul style="list-style-type: none"> • Ground level to crown of tunnel (m) - 17.3; • Ground level to track (m) - 24. <p>EIAR Chapter 21 (Land Take), Section 21.6.1.2, outlines the Compensation for Compulsory Purchase process. Under the Transport (Railway Infrastructure) Act 2001 (as amended) (the 'Act') upon commencement of the Railway Order (RO), TII will be authorised to acquire compulsorily any land or rights in, under or over land or any substratum of land specified in the RO, and, for that purpose, the RO shall have effect as if it were a compulsory purchase order (as referred to in Section 10(1) of the Local Government (No.2) Act 1960 (as inserted by Section 86 of the Housing Act, 1966) which has been duly made and confirmed) with modifications. Accordingly, TII is authorised to serve a notice to treat pursuant to the provisions of the Housing Act, 1966, including Section 79 thereof. TII also has the right to enter onto other lands for the purposes of carrying out the works permitted under the RO in certain circumstances. The acquisition of the various specified rights and interests in land and property, is necessary in order to ensure the delivery of the MetroLink project in its entirety.</p> <p>Further information can be obtained from the MetroLink Compulsory Purchase Order Guideline document (September 2022) which can be found on-line at: https://www.metrolink.ie/media/0jlpbyso/metrolink_cpoguideline_final_september-2022.pdf</p>
6	SUBSTRATUM DEFINITION (paragraph 2)	3	<p>The lack of detailed design drawings means that we have no indication of where the top of the Tunnel will be in relation to the underside of our basement floor level of our property or any foundations. This will have serious implications for the property in terms of risk from Vibration during the works and also when the Rail is operational, and also in relation the possible interpretation of rule 17, as referred to previously.</p>	<p>Relevant preliminary drawings (alignment longitudinal section, general arrangement, property details) have been issued to 2 Harcourt Terrace property - please refer to Item no. 4 above. The detailed design drawings will be prepared by a Design and Build Contractor after the Railway Order is granted by An Bord Pleanála.</p> <p>With regards to your concerns related to potential vibration impacts, EIAR Appendix A14.5, Groundborne Noise and Vibration and Blasting Modelling Results, 14.4 Section AZ4 Northwood to Charlemont, presents the predicted day and night VDV levels (Vibration Dose Value is a parameter that combines the magnitude of vibration and the time for which it occurs) for TBM passage during construction phase and for railway operation, with the results for 2 Harcourt Terrace summarised below:</p> <ul style="list-style-type: none"> • The predicted day and night levels of groundborne vibration during TBM Passage are 0.255ms-1.75 (VDV day) and 0.214ms-1.75 (VDV night). Both of these values are lower than VDV Threshold Levels of 1ms-1.75 (VDV day) and 0.5ms-1.75 (VDV night) presented Levels presented in EIAR Chapter 14.2.1.2.3 Vibration from Construction Sources other than Blasting, meaning that no significant impact is expected on the property as a result of vibrations during TBM passage. • The predicted day and night levels of groundborne vibration during railway operation are 0.007ms-1.75 (VDV day) and 0.004ms-1.75 (VDV night). Both of these values are lower than the VDV Threshold Levels of 0.8ms-1.75 (VDV day) and 0.4ms-1.75 (VDV night) presented in EIAR Chapter 14.2.1.2.4 Vibration from Operation, meaning that no significant impact is expected on the property as a result of vibrations during railway operation.

Submission No.	250
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Item No.	Section Ref.	Page No.	Observation Statement	TII Response
-----------------	---------------------	-----------------	------------------------------	---------------------

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7	APPROPRIATE ASSESSMENT (paragraph 1)	3	We also note that the Historic nature of Harcourt Terrace doesn't feature anywhere in the non -Technical summary not even in section 10.17 of the non -Technical summary which purports to deal with Archaeology and Cultural Heritage. One can only conclude that it has not been considered in TII's deliberations in relation to possible effects on a architecturally significant part of Dublin.	<p>The Non-Technical Summary document summarises in non-technical language the Environmental Impact Assessment Report (EIAR), including the likely significant effects identified, the mitigation and monitoring measures proposed, as well as any residual effects arising from MetroLink that have been identified during the Construction and Operational Phases to inform the planning consent process. This document does not present the detailed assessments undertaken.</p> <p>The specific chapters of the EIAR present details on the impact assessment of the MetroLink Project on the receiving environment during the Construction Phase and Operational Phase. In this sense, the EIAR Chapter 26 (Architectural Heritage) describes and assesses the likely direct and indirect significant effects of the proposed Project on Architectural Heritage. The protected structure status of the building is known (see Table 26.25: Architectural Heritage Constraints from St Stephen's Green Station to Charlemont Station) hence your property has been subject to impact assessment and the results are presented in the Section 26.5.4.15 St Stephen's Green Station to Charlemont Station. According to the findings of impact assessment, no direct impacts on architectural heritage are predicted during Construction Phase in this section of the study area. Also, no direct or indirect impacts on architectural heritage are predicted during Operational Phase.</p>
8	APPROPRIATE ASSESSMENT (paragraph 2)	3	In relation to Section 10.12 Soils and Geology, in the non-technical summary. It is our view that it is far too vague, so as to be of little use when considering possible impacts on our property. We would like to put on record that there is a granite rock seam which runs through the lands adjacent to Harcourt Terrace and our property which will in our view constitute a risk of damage occurring to our property, especially during the works. This would appear not to have been considered. We also that there is a underground river called the river Steyne which flows below the Terrace, similarly, there has been no cognizance or consideration of this demonstrated within these proposals.	<p>As stated in response item (7) above, the Non-Technical Summary document summarises in non-technical language the Environmental Impact Assessment Report (EIAR), including the likely significant effects identified, the mitigation and monitoring measures proposed, as well as any residual effects arising from MetroLink that have been identified during the Construction and Operational Phases to inform the planning consent process. This document does not present the detailed assessments undertaken.</p> <p>The local geological conditions were considered (including the presence of River Steyne/Stein) and presented in detail in the EIAR Chapter 20 (Soils and Geology).</p> <p>EIAR Appendix A5.17, Building Damage Report, covers the assessed impacts of construction generated ground movements and settlement on property. The settlement contours calculated were used to undertake the buildings damage assessment. It is important to recognise that your property is a 'special' building (designated protected structure) and hence will be further assessed (Phase 3) at the detailed design stage to verify the impacts. Currently, the building is assessed at Damage category 2 or below. The damage categories are described in section 4.3.2 of the EIAR Appendix A 5.17, Building Damage Report.</p> <p>The Phase 3 assessment will take account of final design and construction methodology details. A detailed survey will be carried out as part of the Phase 3 assessment to provide the necessary additional information to inform this detailed analysis of how the individual elements of the building would be affected by the predicted ground movements. The method and extent of the detailed analysis will be determined on a case-by case basis and may include a more sophisticated semi-empirical or a detailed soil-structure interaction using finite element modelling methods. The results of this refined assessment typically show that earlier assessments are conservative and overestimate the likely impact of construction generated ground movements.</p> <p>2 Harcourt Terrace building is a designated protected structure and as referred to EIAR Chapter 26 (Architectural Heritage), in all cases where the built heritage structures are in the vicinity of the proposed tunnelling these buildings will be included in the Property Owner Protection Scheme (POPS), whereby they are to have condition surveys carried out prior to the commencement of tunnelling and again after completion. In those cases where the POPS survey identifies that damage has occurred as a result of the tunnelling works repairs are to be prepared in accordance with method statements prepared by the POPS Conservation Architects and approved where necessary by the MetroLink Project Conservation Architect (PCA). It is currently envisaged that all such repairs will relate to the infilling of cosmetic cracking and will not constitute 'works'. Further detail on the POPS process can be found in Chapter 26 (Architectural Heritage), Chapter 21 (Land Take) and Chapter 11 (Population & Land Use) of the EIAR. The Property Owners' Protection Scheme is in addition to the existing legal rights of property owners and is in place to provide a simple and prompt way of rectifying any damage caused under the project up to the ceiling of €45,000. If the sum should exceed this amount the normal claims process would be used with the insurance companies for TII and/or the contractor.</p>

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9	APPROPRIATE ASSESSMENT (paragraph 3)	3	For the reason stated above we feel that the Bord should reject the draft order as submitted and also on the basis that the acquisition of our lands would constitute a breach of my Clients constitutional right to the quiet enjoyment of their property.	This is a matter for ABP.
10	Conclusion	4	In conclusion we would request that in any decision the Bord makes they should direct that my Clients costs, incurred in dealing with this matter should be discharged by the TII.	See item 5 above.